

ESTTA Tracking number: **ESTTA134821**

Filing date: **04/11/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Bayer Aktiengesellschaft
Granted to Date of previous extension	04/11/2007
Address	D-51368 Leverkusen-Bayerwerk, GERMANY
Attorney information	Stanley C. Macel, III Connolly Bove Lodge & Hutz LLP P.O. Box 2207 Wilmington, DE 19899 UNITED STATES trademarks@cblh.com Phone:302-658-9141

Applicant Information

Application No	78874352	Publication date	12/12/2006
Opposition Filing Date	04/11/2007	Opposition Period Ends	04/11/2007
Applicant	INNERCAP Technologies, Inc. 2609 West Tyson Avenue Tampa, FL 33611 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Aspirin in combination with nutritional supplements and synergistic pharmaceutical preparations for the treatment of arthritis, allergies, anemia, anti-aging, antioxidants, antipyretics, antacids, anti-emetics, nausea, antiviral, cancer, cardiovascular disease, circulation conditions, cough from colds, dementia, depression, diabetes, digestion, energy, eye care, high cholesterol, high homocystine levels, hypertension, irritable bowel syndrome, insomnia, inflammation relief, constipation, menopause, neurological conditions, osteoporosis, pain, prostate care, urological symptoms, and vitamin and mineral deficiencies
--

Attachments	ASPIRINPLUS Notice of Opp.pdf (3 pages)(87129 bytes)
Signature	/scm/
Name	Stanley C. Macel, III
Date	04/11/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Application Serial No 78/874,352	:	
	:	
Filed: May 2, 2006	:	
	:	
For the Mark: ASPIRINPLUS	:	Opposition No. _____
	:	
Published: December 12, 2006	:	
	:	
Bayer Aktiengesellschaft,	:	
	:	
Opposer,	:	
	:	
v.	:	Attorney Docket No.: 1426-1564
	:	
INNERCAP Technologies, Inc.,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

In the matter of trademark Application Serial No. 78/874,352 filed May 2, 2006 to register the mark ASPIRINPLUS for the goods "Aspirin in combination with nutritional supplements and synergistic pharmaceutical preparations for the treatment of arthritis, allergies, anemia, anti-aging, antioxidants, antipyretics, antacids, anti-emetics, nausea, antiviral, cancer, cardiovascular disease, circulation conditions, cough from colds, dementia, depression, diabetes, digestion, energy, eye care, high cholesterol, high homocystine levels, hypertension, irritable bowel syndrome, insomnia, inflammation relief, constipation, menopause, neurological conditions, osteoporosis, pain, prostate care, urological symptoms, and vitamin and mineral deficiencies (International Class 5)" which was published for opposition on December 12, 2006, Bayer Aktiengesellschaft ("Opposer" or "Bayer"), a joint stock company organized under the laws of Germany and having a business address of D-51368 Leverkusen-Bayerwerk, Federal

Republic of Germany, believes that it will be damaged by the registration of the above-referenced mark, and hereby opposes the same.

As grounds for this opposition, Bayer asserts that:

1. Bayer is engaged in the sale of the same or related products as those identified in the subject application. Further, Bayer does use and has an interest in using the terms “aspirin,” “aspirin plus” and/or “aspirinplus” descriptively and/or generically in its business.

2. INNERCAP Technologies, Inc. (“Applicant”), a Florida Corporation located at 2609 West Tyson Avenue, Tampa, FL 33611, seeks to register ASPIRINPLUS as its mark for the goods described above in International Class 5, as evidenced by the above-referenced publication of said mark.

3. The term “aspirinplus” is non-distinctive and/or at best merely descriptive of the Applicant’s goods and as such should not be allowed to register. 15 U.S.C. § 1052(e)(1).

4. Alternatively, if the term “aspirinplus” is not found to be non-distinctive and/or merely descriptive, then its use by Applicant is likely to result in confusion with Bayer’s use of its ASPIRIN PLUS trademark, or in the belief that Applicant or its ASPIRINPLUS products are in some way connected with, licensed or approved by Bayer.

5. Prior to the May 2, 2006 filing date of the intent to use application being opposed, Bayer, through its related companies, used its ASPIRIN PLUS trademark in commerce in the United States in connection with products consisting of aspirin and other supplements.

6. Upon information and belief, Applicant had no claim of right in the mark ASPIRINPLUS prior to May 2, 2006, the filing date of the application being opposed.

7. Applicant’s use of the mark ASPIRINPLUS is without Bayer’s consent or permission.


8. Bayer will be damaged by registration of Applicant of ASPIRINPLUS for the goods identified in the application as a result of the abridgement of its rights to use such term descriptively and/or generically in its business. Alternatively, it will be damaged by the likelihood of confusion described above.

WHEREFORE, Opposer prays that this Opposition be sustained, and the registration sought by Applicant be refused.

Respectfully submitted,

Bayer Aktiengesellschaft

Dated: April 11, 2007

By: 
Stanley C. Macel, III
Jennifer Fraser
Christina M. Hillson
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, DE 19899
302-658-9141
Attorneys for Opposer